

PROFESSIONAL FIRE FIGHTERS' ASSOCIATION OF CLAYTON,

Petitioner,

V.

CITY OF CLAYTON - CLAYTON
FIRE DEPARTMENT,

Respondent.

Public Case No. R 90-034

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Professional Fire Fighters' Association of Clayton of a petition for certification as public employee representative of a unit described as Fire Fighters, Paramedics and Captains of the City of Clayton Fire Department, but excluding the Fire Chief, the Assistant Chief/Fire Marshall, Battalion Chiefs and all clerical workers. A hearing was held on August 17, 1990, in Clayton, Missouri, at which representatives of petitioner and the City of Clayton were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, employer member Pamela S. Wright and employee member Paul Sanchez. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo 1986.

At the hearing, the parties were given full opportunity to present evidence. The sole issue was whether the captains are supervisory employees who, for that reason, should be excluded from the bargaining unit. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The City of Clayton (hereinafter referred to as the "City") maintains a fire department (hereinafter referred to as the "Department") for the purpose of providing fire fighting and emergency medical responses. The Department consists of 29 employees: one fire chief, one assistant chief/fire marshall, three battalion chiefs, six captains, seven paramedics/fire fighters, and eleven fire fighters (the latter two classifications referred to collectively as fire fighters). The fire fighters report to the captains who in turn report directly to the battalion chiefs. The battalion chiefs answer to the assistant chief/fire marshall who reports to the department head, i.e., the fire chief.

The Department operates with three crews or shifts with each group having one battalion chief, two captains and six fire fighters. The crews work from the Department's only firehouse on a twenty-four hour shift. If additional crew members are needed, the captains are responsible for calling in more fire fighters from a list prepared by the assistant chief/fire marshall. He has no discretion in selecting the additional personnel--the captain must call the employees in the order provided on the list which is designed to equalize overtime.

All employees work at the City's one firehouse which has working, sleeping, and eating areas. There is one large dormitory area in which three captains have their bunks along with the fire fighters. The other captains and three battalion chiefs maintain their bunks in separate quarters. The assistant chief/fire marshall and the battalion chiefs have offices in the firehouse. The captains are not given offices.

The captains are charged with seeing that the daily chores around the fire station are performed and that the daily log is completed to indicate that the chores have been done. The assignments are passed down by the battalion chiefs to the captains, who keep some work and distribute the rest.

The captains share in the daily duties including general cleaning, grocery shopping, cooking, and equipment maintenance. The record indicates that the daily routine is automatic and little, if no, supervision is required.

When the fire alarm sounds, the fire fighters and paramedics/fire fighters are not directed by the captains, but instead automatically respond to their assigned equipment based on training and experience. The captains ride on the trucks with the fire fighters, while the chief, assistant chief/fire marshall and battalion chiefs all have their own cars to drive to the fire scene (if they go at all). On all first alarms, the battalion chiefs are in attendance at the fire scene and are in charge. If the assistant chief/fire marshall or the chief appears on the scene, the ranking officer is in charge. If there is a still alarm call (e.g., a car fire), the battalion chiefs generally do not leave the fire station and the captains are then in charge at the scene.

If there is a structural fire, the captains enter buildings, have hands-on use of the equipment, and have responsibility for rescue and ventilation. Their main responsibility is the safety of fire fighters. They do not have to assign the fire fighters by name because the group is trained as a unit. The fire fighters all know how to react to the same situations. If a fire fighter discovers the fire, he is required to take appropriate action.

Upon returning from a fire scene, the captains complete fire incident report forms which are fill-in-the-blank forms prepared by the assistant chief/fire marshall. Their reports are submitted first to the battalion chiefs and then to the assistant chief/fire marshall who reviews them and may request corrections to be made by the captains. In addition, captains mark the particular runs made each day in the daily log. The captains also record in the daily duty sheet the piece of equipment used on each run, where each employee was assigned and each employee's function at the fire scene. All employees are required to prepare the fire marshall inspection forms which are designed by the fire marshall's office. Generally, the captains devote 1% to 5% of their day completing

paper work. If there are no calls, the paper work can be performed in 15 minutes or less for a 24-hour shift.

The Board heard conflicting testimony regarding the authority of the captains to recommend changes in the employment status of their subordinates. The record is clear, however, that in the last several years few opportunities have arisen for disciplining, hiring, training, promoting, transferring or discharging employees. The record is also clear that captains receive no supervisory training after they are promoted.

The Board finds that the captains have minimal input into recommending changes in the employment status of their subordinates. Job applicants apply for employment to the City's personnel department. After the applications are screened, the assistant chief/fire marshall reviews them to determine if an applicant is qualified; then a battalion chief conducts further investigation of the application in question. In past hirings, captains were not requested to make recommendations and were not consulted regarding same. In the most recent hiring, Captain Nobe gave an unsolicited recommendation that Private Watkins be hired. This recommendation was based on the fact that Private Watkins was a personal acquaintance of Nobe. Nobe was not consulted when other applications for that same position had been considered and either had not been selected or had declined the position. The captains have not been included in the interview process.

For promotions, the captains are asked to complete supervisory potential evaluation forms which are then "taken under advisement" as part of the promotion process. The captains, however, are not included in the oral interviews for those individuals being considered for promotion. Additionally, it is not a regular part of their job to give scheduled performance evaluations of their subordinates.

When transfers occur, they are initiated by the assistant chief/fire marshall and implemented by a battalion chief. Captains do not initiate transfers or make formal

recommendations regarding which employees should be transferred. Battalion chiefs sometimes solicit captains for their views concerning which employees could be removed from their shift.

Occasions for discipline of employees rarely occur in the Department. Captain Bort, who has 22 years with the Department, recalled just one instance of fire fighters discipline of any kind during that entire period. No fire fighter has ever been discharged. Captains do not possess authority to implement discipline or discharge employees on their own. Some captains here recommended disciplinary action which was not followed. Specifically, one captain sent an employee home as discipline, but the employee was later paid for his lost time. Another captain (Bort) recommended that an improper shift trade not be allowed, but this recommendation was overruled.

Captains conduct training exercises. The training is done, however, under the guidance of the battalion chiefs who are considered the training officers of the Department. Paramedic/fire fighter Mark Thorp does emergency medical services education for the Department at the request of the battalion chief.

All the employees in the Department are paid a salary which is broken down into an hourly rate for time and a half purposes. Captains and fire fighters are eligible for overtime. Battalion chiefs approve the overtime for both groups. The captains receive a higher salary than the fire fighters: captains are paid about 5% more than paramedic/fire fighters and 15% more than fire fighters. Vacations and other benefits are based on longevity with the City. It is possible for a captain to have less vacation time than a fire fighter who has more years of seniority. The captains, however, have priority in selecting vacation days.

CONCLUSIONS OF LAW

The Professional Fire Fighters Association of Clayton has petitioned to be certified as public employee representative of a bargaining unit comprised of all

captains, fire fighters, and paramedic/fire fighters in the Fire Department of the City of Clayton. The City contends, contrary to the union, that the captains are supervisory employees and therefore should be excluded from the bargaining unit. The sole issue before the Board is whether the captains are to be included in the proposed bargaining unit.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." The Board, however, has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. See e.g., Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977); St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976).

In determining the supervisory status of employees within the bargaining units, the Board has consistently examined the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he

spends a substantial majority of his time supervising employees.

Upon application of the foregoing factors to the record before us, the Board finds that the captains are not supervisory employees.

The record clearly indicates that the captains play a minimal role in the Department's personnel decisions. They are not active participants in the hiring process. They are not included in interviewing new employees.¹ Further, there is little evidence that the captains may effectively recommend the discharge, transfer or discipline of employees. They are not required as part of their duties to complete written evaluations of their subordinates.² Concerning promotions, the captains are asked to fill out supervisory potential evaluation sheets for those individuals being considered for promotion to captain, but it is unclear what weight this evaluation plays in the promotion process. Given the absence of any showing as to what use this form plays, the inference we draw is that these evaluation sheets do not have critical importance in determining promotions.

As to transfers, captains do not initiate same; when transfers occur, they are initiated by the assistant chief/fire marshall and implemented by a battalion chief. Although a battalion chief may ask captains for their opinions as to which employees they could do without on their crew, captains are not requested to make, nor do they

¹ In Civilian Personnel Div., St. Louis Police Officers Assn. v. City of St. Louis, Bd. of Police Comm'rs., Public Case No. 84-116, at 18-19, (SBM 1985) the Board cited participation in the interview process for new employees as a significant reason for concluding that the position of paymaster was a supervisory one.

² The absence of scheduled evaluations contrasts with the significant role evaluations played in personnel decisions in other cases in which the employees conducting the evaluations were found to be supervisors. See Professional Fire Fighters of St. Louis County, Local 2665 v. Rock Township Ambulance District, Public Case R 89-015, at p. 9, (SBM 1989); Service Employees' Int'l. Union, Local 50 v. Meramec Valley R-3 School Dist., Public Case No. 88-001, at p. 7 (SBM 1987).

offer, formal recommendations regarding which employees should be transferred. Thus, captains do not formally participate in the transfer of employees.

Finally, regarding discipline and discharge, it is noted that there has been little discipline of fire fighters in the past and no fire fighter has ever been discharged. Captains are not empowered to initiate discipline or discharge employees without the involvement of higher authority. Captains may recommend discipline, but their recommendations are not always followed: the record contains two instances where captains recommend disciplinary action which was not followed. Under these circumstances, the captains' actual authority to recommend discipline is limited in nature.

The Board concludes that the captains do not exercise independent judgment and discretion in directing their employees. We base our conclusion on several factors. They are very rarely the highest ranking officers on regular duty at the firehouse. During the day shift, the fire chief, assistant chief/fire marshall, and battalion chiefs are present; with battalion chiefs also on duty for the two remaining shifts.³ The Board considered this a significant factor in Professional Fire Fighters of St. Louis County, Local 2665 v. Eureka Fire Protection District, Public Case No. R 89-018, at p. 10 (SBM 1989) wherein the Board held the captains to be supervisors because they were the highest ranking officer on duty for a substantial part of each day.

Additional bases for finding a lack of independent discretion in direction and assignment of the work force: special projects are initiated by the assistant chief/fire marshall and the battalion chiefs; captains share in the performance of the daily chores around the firehouse; the daily routines are fairly standardized; the fire fighters are

³ The exception would be when the battalion chiefs are on vacation and sick leave, an estimated 10-15 days per year.

highly trained individuals who require little instruction. On all first alarms, the battalion chiefs will be in charge at the fire scene. On still alarms, a captain will generally be the highest ranking officer, but little direction is needed because the fire fighters are well-trained, including the taking of independent action is necessary. Merely being in charge though does not constitute authority to direct the work force. See, St. Charles Fire Fighters, Local 1921 v. City of St. Charles, Public Case No. 79-024 (SBM 1979); IAFF, Local 2665 v. Riverview Fire Protection District, Public Case No. 87-017 (SBM 1978). Under these circumstances, we find that captains do not exercise independent discretion and judgment in directing and assigning the work force.

Regarding factor (3) above, we note the battalion chiefs, and not the captains, serve as the crew chief. That being so, we are persuaded that the battalion chief exercises greater authority over the fire fighters than do the captains. When a crew is at its full complement, each captain exercises authority over six crew members. The captains are subject to the authority of the battalion chiefs, assistant chief/fire marshall and fire chief. The small number of subordinates to captains is another indication that captains are not supervisors. We recognize this factor is not the sole consideration but it is persuasive when coupled with the Board's findings on the other criteria in determining supervisory status.

Concerning the level of pay, captains admittedly are paid more than fire fighters, but this higher rate of pay appears to be based on work responsibilities. Pay increases are given across-the-board on a percentage basis to all employees. Although captains get to select their vacations ahead of their subordinates, eligibility for vacation time is based on seniority. Thus, a fire fighter with more seniority will accrue greater vacation time than captains with less tenure. Captains are eligible to receive hourly overtime--indicative of non-supervisory status. All employees have equal right to educational benefits paid for by the Department. The Board is not persuaded that the captains receive higher compensation because of supervisory status.

Finally, focusing on the last two factors, the Board concludes that the captains do not spend a substantial portion of their time supervising employees, but rather simply act as working foremen. Whether at the firehouse or at the fire scene, the captains share the same duties as their co-workers. It is well established that where captains work alongside other fire fighters, the captains' authority is closer to that of a working lead than a true supervisor. See IAFF, Local 2665 v. Riverview Fire Protection District, supra; IAFF, Local 316 v. City of Carthage, Public Case No. 86-005 (SBM 1986). In sum, the Board finds that the primary function of the captains is the supervision of an activity rather than the supervision of employees.

In view of all the foregoing, this Board concludes that the captains are not true supervisors. Therefore, the Board holds that captains should be included in the proposed bargaining unit.

DECISION

It is the decision of the State Board of Mediation that an appropriate bargaining unit of employees is as follows:

All regular full-time employees of the Clayton Fire Department, excluding the Fire Chief, Assistant Chief/Fire Marshall, Battalion Chiefs and all clerical workers.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below, excluding Saturdays, Sundays and holidays. The exact time and place shall be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who are employed during the payroll period immediately preceding the date below, including employees who did not

work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purpose of exclusive recognition by Professional Fire Fighters' Association of Clayton.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to the Association, within fourteen days from the date of receipt of this decision, an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately proceeding the date of this decision.

Signed this 13th day of November, 1990.

(SEAL)

STATE BOARD OF MEDIATION

/s/ Mary L. Gant

Mary L. Gant, Chairman

/s/ Pamela S. Wright

Pamela S. Wright, Employer Member

/s/ Paul Sanchez

Paul Sanchez, Employee Member